IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 2923 of 2005

Between:

M/s. Vijaya Borewells, a proprietory concern through its Proprietor,
Sri K. Vykunta Rao, S/o. Sri Vasudeva Rao, Aged 42 years, having business at

8-30-208, Thotapalem, Vijayanagaram

..... PETITIONER

AND

1 Asst. Commercial Tax Officer, Integrated Check Post, Bhimunivaripalem, Vijayanagaram District.
2 Commercial Tax Officer, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue order, direction or writ more particularly one in the nature of writ of Mandamus declaring the action of the first respondent in imposing entry tax on diesel driven air compressors under notice/order dt. 14-2-2005 as illegal, unwarranted and arbitrary as diesel driven air compressors are not covered by G.O.Ms.No. 555, dt. 12-3-2002 and G.O.Ms.No. 367 and impugned notice dt. 14-2-2005 may be set aside and consequently to release the air compressor in favour of the petitioner.

Counsel for the Petitioner: MR.K.K.WAGHRAY

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court made the following :

ORDER: (per the Hon'ble Sri Justice M.H.S.Ansari, j.)

Having heard the learned counsel for the petitioner and also keeping in view the nature of relief prayed for, we are inclined to dispose of the instant writ petition with certain appropriate directions.

Earlier, petitioner had filed a writ petition, being W.P.No.2134 of 2005 questioning the notice dated 13-01-2005, whereby the petitioner was informed that the goods in question viz., air compressors are liable to entry tax at the rate of 8% and a sum of Rs.1,80,000/- towards tax was proposed. Petitioner was called upon to submit his explanation within 15-01-2005. That writ petition was disposed of without going into the merits of the contentions raised with direction to the petitioner to submit his reply to the impugned notice and for the respondent to consider the same and dispose of in accordance with law.

Pursuant to the aforesaid directions of this court petitioner submitted his reply, inter alia, contending that diesel driven air compressors do not come within the purview of G.O.Ms.No.552 dated 12-03-2002 and that no entry tax is payable in respect of the goods detained. Reliance was also placed upon the clarification issued by the Commissioner of Commercial Taxes in his reference dated 05-11-2002.

Learned Special Assistant Commercial Tax Officer considered the said representation of the petitioner and issued the impugned show cause notice, wherein it is stated that the Commissioner, Commercial Taxes has informed by a subsequent clarification letter No.A1(3)-1594-2004 dated 30-11-2004 that all compressors are liable to entry tax and that he proposes to subject the goods of the petitioner to entry tax at 16% instead of 8% already proposed in his earlier show cause notice dated 13-01-2005. Petitioner was asked to submit his reply to the impugned show cause notice within time prescribed.

As the subsequent circular of the learned Commissioner of Commercial Taxes dated 30-11-2004 is not in challenge before us, we are not inclined to enter into the merits of the controversy or consider the contentions raised leaving it open to the petitioner

to raise all such contentions in reply to the said show cause notice. By the impugned show cause notice petitioner has been put on notice of the proposed liability of the petitioner to pay tax at 16% instead of 8% as was proposed in the earlier show cause notice. This is on the alleged ground of the subsequent circular dated 30-11-2004, therefore, we are not inclined to entertain the instant writ petition and dispose of the same with a direction to petitioner to submit his reply to the impugned show cause notice within a period of two weeks from date hereof and if such reply is filed within the time so stipulated, it shall be open for the respondents-authorities to proceed in accordance with law and in compliance with principles of natural justice.

However, as regards the detention of the goods at the check post is concerned, we are inclined to issue direction for release of the same subject to the payment of 50% of the tax of Rs.1,80,000/- demanded in the notice dated 13-01-2005. Accordingly, if petitioner deposits Rs.90,000/- with the respondent No.1, the goods detained by him shall be released to the petitioner without prejudice to the rights and contentions of the respondents-department. Payment so made by the petitioner shall be subject to the final orders that may be passed pursuant to the impugned show cause notice dated 14-02-2005.

Accordingly, writ petition is disposed of. No order as to costs.

_____

M.H.S.ANSARI, J.

_____

T.Ch.SURYA RAO, J.

Dated 21-02-2005.

Note: Issue wire at party's costs.

B/O

skmr

..... REGISTRAR

To

1 Asst. Commercial Tax Officer, Integrated Check Post,

Bhimunivaripalem,
Vijayanagaram District.
2 Commercial Tax Officer, Nellore District.

3 2 CCs to G.P. for Commercial Tax, High Court Buildings,

Hyderabad(OUT).

4. 2 CD copies